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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/084,283	02/26/2002	David R. Diduch	DID-101	7097
36013 7590 09/22/2009 MOAZZAM & ASSOCIATES, LLC 7601 LEWINSVILLE ROAD SUITE 304 MCLEAN, VA 22102				
EXAMINER				
OU, JING RUI				
ART UNIT		PAPER NUMBER		
3773				
MAIL DATE		DELIVERY MODE		
09/22/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/084,283

**Applicant(s)**

DIDUCH ET AL.

**Examiner**

JING OU

**Art Unit**

3773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 50, 53, 56, 57, 59-62 and 65-67 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 50, 53, 56, 57, 59-62, and 65-67 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This action is responsive to the amendment along with RCE file don 07/13/2009. Claims 50, 53, 56, 57, 59-62, and 65-67 are pending. Claims 50, 53, 59, and 62 are independent. Claims 1-49, 51, 52, 54, 55, 58, 63, and 64 are cancelled.

#### ***Continued Examination Under 37 CFR 1.114***

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 07/13/2009 has been entered.

#### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 50, 53, 56, 57, 59-62, and 65-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harber et al (US Pat. No.: 5,432,389) in view of Sachdeva et al (US Pat. No.: 5,607,435) and Casperi et al (US Pat. No: 4,923,461).

In regard to Claims 50, 53, 56, 57, 59-62, and 65-67, Harber et al discloses a surgical device comprising: a cylindrical body having a lumen; an elongate member positioned substantially within and slidable through the lumen of the body, the elongate member include a distal portion; wherein the distal portion further including a transverse opening; a first jaw and a second jaw connected to the body and encompassing at least a portion of the elongate member; a puncturing projection at the most distal end of the distal portion of the elongate member and slidable through the lumen of the body; a strand of suture carried in the transverse opening; and a handle (52).

Harber et al does not appear to disclose that the distal portion of the elongate member having superelastic properties and one of the jaws having an opening; wherein the distal portion of the elongated member is in a stressed configuration substantially

contained within the lumen of the cylindrical body in a first position and in a unstressed configuration in a second position.

However, Sachdeva et al teaches a suture apparatus comprising superelastic puncturing distal portion; wherein the distal portion of the elongated member is in a stressed configuration substantially contained within the lumen of the cylindrical body in a first position and in an unstressed configuration in a second position. In addition, Casperi et al teaches a suture apparatus comprising a jaw having an opening extending through a middle portion of said jaw for the suture needle to pass through.

Harber et al, Sachdeva et al, and Casperi are analogous art because they are from the same field of endeavor.

At the time of the invention, it would have been obvious to one of ordinary skill in the art, having the teachings of Harber et al, Sachdeva et al, and Casperi et al before him or her, to modify the suture apparatus of Harber et al to include that that the distal portion of the elongate member having superelastic properties; wherein the distal portion of the elongated member is in a stressed configuration substantially contained within the lumen of the cylindrical body in a first position and in a unstressed configuration in a second position as taught by Sachdeva et al and one of the jaws having an opening as taught by Casperi et al.

The suggestion/motivation for the distal portion of the elongate member to have superelastic properties such that the distal portion of the elongate member is in a stressed configuration substantially contained within the lumen of the cylindrical body in a first position and in a unstressed configuration in a second position would have been

to enable to distal portion of the elongate member to have a shape when extended outside of the delivery tube that is sufficiently bend or curved to be suitable for performing a desire function (Sachdeva et al, see Abstract). The suggestion/motivation for having an opening on one of the jaws would have been to facilitate accommodation of the needle when the jaws are closed clamping tissue to be suture therebetween (Casper et al, Col.4, lines 39-44).

Therefore, it would have been obvious to combine Sachdeva et al and Casperi with Harber et al to obtain the invention as specified in the instant claims.

#### ***Response to Arguments***

7. Applicant's arguments with respect to claims 50, 53, 56, 57, 59-62, and 65-67 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 4836205 A	Barrett; Gene R.
US 7112208 B2	Morris; John K. et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JING OU whose telephone number is (571)270-5036. The examiner can normally be reached on M-F 7:30am - 5:00pm, Alternative Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Uyen (Jackie) T Ho can be reached on (571)272-4696. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JO

/(Jackie) Tan-Uyen T. Ho/  
Supervisory Patent Examiner, Art Unit 3773